IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

MFA.No. 343 of 2002(B)

OPMV.1895/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
.....

APPELLANT: PETITIONER

T.A.MURALEDHARA RAO,S/O.SARADA BAI,
TRIKOVIL,MANNANAM P.O.,KOTTAYAM.

BY ADV. SRI.MATHEW JOHN (K)
SRI.BABY THOMAS

RESPONDENTS: RESPONDENTS
---

1. SHAJI KUMAR.K.A.,KALLAMMAKAL HOUSE,]
KOLAPARA,KUDAYATHOOR P.O.,THODUPUZHA.

2. RAJKUMAR S/O.GOPALA PILLAI,PLATHOTTATHIL
KOLAPARA,MUTTAM,THODUPUZHA.

3. THE ORIENTAL INSURANCE CO.LTD.,KOTTAYAM

BY ADV. SRI.MATHEWS JACOB
SRI.P.NOOR SEMIR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 7.11.2007, THE COURT ON 07/11/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 343 OF 20O2

Dated this the 7th day of November, 2007

JUDGMENT

Koshy, J.

The appellant in this case was the owner of a taxi jeep bearing registration No.KL5-C/7083. It is his contention that jeep bearing registration No.KL-6/5360, driven by the second respondent in a rash and negligent manner, hit his jeep which resulted in extensive damage to his jeep. He filed application for compensation for the damages caused to his jeep. His case was considered along with two other cases filed by the passengers in the jeep who got injured. According to the Tribunal, the accident occurred due to the negligence of both drivers and compensation granted to the injured passengers were ordered to be given by the Insurance Company of both jeep. Of course, the Insurance Company of both jeeps are not aggrieved by the appellate court because both jeeps were insured by the same Insurance Company. One of the injured persons was examined as PW1. PW1 deposed that the accident occurred due to the negligence of the second respondent driver of the offending vehicle. Exhibit P10 is the charge sheet issued by the police which shows that the second respondent alone was charge sheeted. Exhibit A14 scene mahazar also supports the same. In fact in the written statement filed by the 6th respondent Insurance Company it was contended that there is no negligence on the part of the appellant driver, but because of the hit by the vehicle driven by the second respondent, the accident occurred. There is no contention

for the 3rd respondent Insurance Company or any of the respondents that driver of the appellant's jeep was responsible for the accident. No reasoning are given by the Tribunal for finding that the driver of the vehicle owned by the appellant is also responsible. In the absence of any allegations by the Insurance Company that the appellant's driver was negligent and in view of the fact that only the driver of the offending vehicle was charge sheeted and in view of the evidence of PW1, we are of the view that fastening responsibility on the appellant's driver is not correct. The total amount awarded was Rs.37,473/- and because of the 50% negligence, only half of the amount was awarded. We are of the opinion that entire amount ought to have been awarded with interest and the costs at the same proportion as awarded by the Tribunal.

The appeal is allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO. 343 OF 2002

JUDGMENT

7.11.2007